**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.903 OF 2005**

Shri Mahadeo jaydeo Tandel (since deceased)through heirs Smt. Mangalabai Mahade Tandel& others ..Appellants

Versus

Smt. Taramati Namdeo Morje & others ..Respondents

Mr. Brijesh i/b khandeparkar & Associates for the Appellants

Mr. V.S. Gokhale for Respondent Nos. 1 to 5

**CORAM : ANOOP V. MOHTA,J.**

**DATED : 13th July, 2007**

**P.C.**

The original plaintiff being aggrieved and affected by the findings given by the Courts below has invoked Section 100 of Civil Procedure Code and thereby challenged the findings which are against them in a suit for mandatory injunction and possession of the suit premises against the original defendants.

2. After considering the material and evidence led by the parties both the Courts come to a clear

conclusion that the plaintiff failed to prove that he became an absolute owner of the suit property by a will dated 14-2-1959 and further he has valid title and exclusive possession over the suit property; that defendant no. 1 is licencee of the suit house and he has terminated his tenancy by registered notice dated 26-1-1985.

3. On the contrary there is a finding given that the defendant/respondent is a co-sharer of the suit
property and, therefore, she is also the owner of the suit house. The Courts below further affirmed that the defendant proves that the suit is not tenable under the principles of law and thereby suit was dismissed by the trial Court on 28-8-1992.

4. The appeal preferred by the appellant was also dismissed by order dated 27-10-2004 by confirming that the appellant is not exclusive owner of the suit land and exclusive tenant of the suit land. The Appellate Court has further confirmed that respondent no. 1 was not gratutious licencee of the appellant. The Appellate Court, therefore, confirmed that the appellant is not entitled for possession of the land

in its house no. 1805 during the lifetime of defendant no. 1.

5. Considering the fact that the Respondent no. 1 is sister of plaintiff and based on the material placed on record, the finding arrived at by the Courts below cannot be said to be perverse or contrary to the record and/or law.

6. Resultantly, the Appeal is dismissed.

**[ANOOP V. MOHTA, J.]**